HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1379 of 2006

Between

Smt.Lalitha Gupta and others ..Appellants

AND

Punjab and Sind Bank and others ..Respondents

:: JUDGMENT ::

Counsel for the appellant	Sri T.V.L.Narasimha Rao
Counsel for respondent No.1	Sri S.Lakshmikanth
Counsel for respondent No.2	Sri P.Madhusudhan Kumar
Counsel for respondent Nos.4 to 8	Sri P.Venkata Swamy

3.1.2007

Per G.S. Singhvi, CJ

Feeling aggrieved by order dated 10.11.2006 passed by the learned Single Judge in Writ Petition No.16593 of 2006 whereby she declined to nullify the sale certificate dated 7.6.2006 issued by Chief Manager, Punjab and Sind Bank, Abids, Hyderabad in favour of respondent Nos.4 to 8 in respect to the property mortgaged by appellant Nos.1 and 2, the latter have preferred this appeal under Clause 15 of the Letters Patent.

It is borne out from the record that respondent No.2 – M/s Maruthi Tex Prints and Processors Private Limited availed financial assistance of Rs. 300 lakhs from Punjab and Sind Bank (respondent No.1 herein) some time in February, 2003. The appellants offered collateral security in the form of immovable property for repayment of the loan. On account of failure of respondent No.2 to repay the loan along with interest, respondent No.1 declared the loan account of respondent No.2 as non-performing account and initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). As a first step, notice under Section 13(2) of the Act was issued to respondent No.2, its Managing Director and guarantors including appellant Nos.1 and 2 requiring them to repay an amount of Rs.3,33,31,962.93 with future interest at 14.2 per cent per annum within (60) days. Notice sent to the appellants is said to have been refused by their representative. Thereafter, notice under Section 13(4) was issued for taking possession of immovable property mortgaged by respondent No.2. The latter challenged the same by filing an application before the Debts Recovery Tribunal (for short, 'the Tribunal') at Hyderabad under Section 17(1) of the Act, which was registered as S.A.No.119 of 2005. Along with the application, respondent No.2 filed an application for stay. By order dated 24.6.2005, the Tribunal stayed the proceedings initiated by the bank under Section 13(4) of the Act. After some time, respondent No.1 filed an application in the Court of Chief Metropolitan Magistrate,

Hyderabad under Section 14 of the Act. The same was registered as Crl.M.P.No.2806 of 2005. By an order dated 20.8.2005, the Chief Metropolitan Magistrate, Hyderabad appointed Sri K. Tirupathaiah, Advocate for taking possession of the property specified in the schedule appended to that order. In compliance of that order, the Advocate-Commissioner took possession of the property. At that stage, the appellants filed an application under Section 17(1) of the Act, which was registered as S.A.No.147 of 2005. By order dated 17.1.2006, the Tribunal dismissed the application. The appellants carried the matter before the Debts Recovery Appellate Tribunal at Chennai. By an order dated 20.1.2006, the Appellate Tribunal granted interim stay subject to the condition that the appellants should deposit 25 percent of the outstanding loan amount of Rs. 3,33,31,962.93 with respondent No. 1. The latter did not comply with the conditional order passed by the Appellate Tribunal. Consequently, the appeal was dismissed on 1.3.2006.

As a sequel to dismissal of the application filed by the appellants under Section 17(1) and appeal filed under Section 18 of the Act, respondent No. 1 re-started the process for realisation of its dues and after issuing public notice and conducting auction, sold the mortgaged property for a sum of Rs.2,52,00,000/- to respondent Nos.4 to 8. The Chief Manager of Abids Branch of respondent No. 1 issued certificate dated 7.6.2006 in favour of respondent Nos. 4 to 8.

Although the appellants could have challenged the sale proceedings by filing an application under Section 17(1) of the Act, they did not choose to avail statutory remedy available under the very same Act under which the bank had initiated action for recovery of its dues, but instead of adopting that course, they filed Writ Petition No.16593 of 2006 for quashing the sale certificate dated 7.6.2006. The learned Single Judge, after taking cognizance of the orders passed by the Tribunal and the Appellate Tribunal, opined that in the face of order dated 17.1.2006 passed by the Tribunal and orders dated

20.1.2006 and 1.3.2006 passed by the Appellate Tribunal, the petitioners are not entitled to relief under Article 226 of the Constitution. The learned Single Judge concluded that by having failed to comply with the conditional order passed by the Appellate Tribunal, the appellants will be deemed to have forfeited their right to challenge the subsequent action taken by the bank for sale of the mortgaged property.

We have heard Sri T.V.L.Narasimha Rao, learned counsel for the appellants, Sri S.Lakshmikanth, learned counsel for respondent No.1, Sri P.Madhusudhan Kumar learned counsel for respondent No.2 and Sri P.Venkata Swamy, learned counsel for respondent Nos.4 to 8. Sri Narasimha Rao expressed some doubt on the tenability of application which could be filed by his clients under Section 17(1) and argued that this is the reason why they were advised to avail remedy under Article 226 of the Constitution of India, but we have not felt impressed. Section 17(1) of the Act lays down that any person including borrower aggrieved by any of the measures referred to in sub section (4) of Section 13 taken by the secured creditor or his authorised officer under Chapter III of the Act, can file an application along with prescribed fee. Limitation for filing the application under Section 17(1) is 45 days. Sub sections (2) and (3) of Section 17 enumerate the action which can be taken by the Tribunal on an application filed under Section 17(1) of the Act. The use of the expression “any of the measures” referred under Section 13(4) leaves no manner of doubt that any person, who is aggrieved by any action taken by the bank under Section 13(4) which necessarily includes an order for possession of the immovable property and disposal thereof, can file an application under Section 17(1) of the Act. It is, thus, clear that the appellants could have availed statutory legal remedy by filing an application under Section 17(1) of the Act and the writ petition filed by them was clearly misconceived. It however, appears to us that the issue of availability of statutory alternative remedy was not specifically

raised and/or pressed before the learned Single Judge and on that account, the same does not find consideration in the order under challenge.

Be that as it may, we are of the considered view that in the face of availability of statutory remedy of filing an application under Section 17(1), the writ petition filed by the appellants ought to have been dismissed on that ground alone.

With the above observations, the writ appeal is dismissed. However, liberty is given to the appellants to file an application under Section 17(1) of the Act. If such an application is filed, the respondents shall be free to contest the same on all available legal grounds.

As a sequel to dismissal of the main appeal, W.A.M.P.No. 2888 of 2006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

3.1.2007.

C.V.NAGARJUNA REDDY,J

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